IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Bail Appl..No. 7276 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.5840/2007 Dated 03/10/2007
CRIME NO.245/01 OF KOTHAMANGALAM POLICE STATION.

.....

PETITIONER/ACCUSED

NARAYANADAS, S/O DIVAKARA MENON,
PARAMBATH HOUSE, JAYANTHI ROAD,
MARADU, ERNAKULAM.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.K.C.BIJU
SRI.M.M.PRASAD
SRI.P.JIMMY JOHN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KOTHAMANGALAM POLICE
STATION, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/12/2007, ALONG WITH BA NO. 7384 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NOs. 7276 & 7384 of 2007

Dated this the 5th day of December, 2007

ORDER

The common petitioner faces indictment in two separate crimes – both registered under Sec.379 of the IPC. The allegations relate to theft of motor-cycles. Both crimes were registered in 2001. Final reports were filed and cognizance was taken in both cases in 2004. The petitioner was enlarged on bail. But as the petitioner did not appear before the learned Magistrate later, the trial against him could not be continued. Long later, the petitioner surrendered before the learned Magistrate on 18/9/07. He continues in custody from that date.

2. The petitioner had earlier come before this Court claiming regular bail. This Court, by a common order dated 3/10/07 in B.A.Nos.5840 & 5843/07, rejected the said applications after calling for a report from the learned Magistrate. The learned Magistrate undertook that the cases

shall be disposed of by 3/12/07. Accepting that submission, the earlier bail applications were dismissed. The petitioner was given the option to come before this Court for bail again if the cases are not disposed of by 15/12/2007.

3. The trial continued; but it was not completed. The matter stands posted for procuring the presence of the witnesses to 10/1/08. In these circumstances, the petitioner has come before this Court with a renewed prayer that he may be enlarged on bail in these cases.

4. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor continues to oppose the application on the ground that the antecedents of the petitioner and his past conduct, after release on bail in these cases, disentitle him to claim the discretion under Sec.439 of the Cr.P.C. It is prayed that these petitions may be dismissed and the learned Magistrate may be directed to complete the trial expeditiously.

5. The learned counsel for the petitioner, on the contrary, submits that the four other cases against the petitioner – two of them have already ended in acquittal and the other two, the petitioner has been enlarged on bail. The learned counsel for

the petitioner submits that the absence of the petitioner was on account of reasons beyond his control. He wants the court to take note of the fact that the petitioner had voluntarily surrendered before the learned Magistrate on 18/12/07. In these circumstances, the discretion under Sec.439 of the Cr.P.C. may be exercised in favour of the petitioner subject to any appropriate conditions that shall ensure the presence of the petitioner promptly for the continued trial.

6. Having considered all the relevant circumstances, I am satisfied that it will not be just or proper to insist on continued detention of the petitioner in custody for completion of trial in these two cases. Subject to appropriate conditions which shall] zealously ensure that the petitioner is available to continue the trial, the petitioner can now be enlarged on bail, I am satisfied.

7. **In the result:**

(a) These applications are allowed.

(b) The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall, in each case, execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties

each for the like sum to the satisfaction of the learned Magistrate. In the peculiar facts and circumstances of this case, the learned Magistrate must zealously ensure that the sureties offered are sufficient and solvent.

(ii) The petitioner shall report before the S.H.O. of the Kothamangalam Police Station between 5 p.m. and 6 p.m. on all Sundays until the case against is finally disposed of.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge